

## SENATE BILL NO. 142

INTRODUCED BY TASH

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE LICENSING AND LEASING OF STATE LANDS FOR TIMBER AND FOREST MANAGEMENT PURPOSES FOR A TERM NOT TO EXCEED 10 YEARS; AUTHORIZING THE LICENSING AND LEASING OF STATE LANDS FOR THE PURPOSES OF CARBON SEQUESTRATION; AUTHORIZING RULEMAKING TO IMPLEMENT PROGRAMS; AMENDING SECTIONS 77-5-201 AND 77-5-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 77-5-201, MCA, is amended to read:

**"77-5-201. Sale of timber -- forest management.** (1) Under the direction of the board, under any rules established by the board, and after examination, estimate, appraisal, and a report to the board, the department may:

(a) sell the timber crop and other crops of the forests ~~after examination, estimate, appraisal, and report and under any rules established by the board; and~~

(b) lease portions of state land, NOT TO EXCEED 30,000 ACRES, or issue a license to firms, corporations, or individuals for a term not to exceed 25 10 years for the purposes of forest management and the harvest of forest products.

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency due to fire, insect, fungus, parasite, or blowdown or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3).

(4) A forest management license or lease must contain terms and conditions that are required by the board. A forest management licensee or lessee shall implement the terms and conditions required by the forest management license or lease and shall comply with all applicable laws and with rules established by the board for state trust lands.

(5) If the department determines that the licensee or lessee has not complied with its duties under subsection (4) or has violated any of the conditions listed in 77-6-210, the license or lease may be canceled in accordance with the procedures in 77-6-211.

(6) A forest management license or lease may not preclude the use, licensing, or lease of the land for other compatible purposes."

**Section 2.** Section 77-5-202, MCA, is amended to read:

**"77-5-202. Agreement Bid bond -- agreement with purchaser -- bond.** (1) (a) An entity that is submitting a bid for the purchase of a timber crop or other crops of the forests or for a lease or license for forest management shall submit a bid bond.

(b) The amount of the bid bond may not be less than 5% of the bid amount. The department shall establish bid bond requirements and amounts by rule as provided in [section 8].

(2) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall must stipulate that all timber shall must be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization,

scaling, and slash disposal and ~~such~~ other rules ~~as~~ that in the discretion of the board are essential to the perpetuation of the state forests.

~~(2)(3)~~ (a) Except as provided in subsection ~~(2)(b)~~ (3)(b), as a guarantee for the faithful performance of the agreement, the purchaser ~~shall~~ must be required to furnish a performance bond, with sufficient sureties, to the state of Montana; in an amount equal to the potential loss to the state; as determined by the department.

(b) The performance bond required under ~~this section~~ subsection (3)(a) must be in an amount equal to at least 5% of the estimated value of the timber sold."

**NEW SECTION. Section 3. Definitions.** As used in [sections 3 through 8 9], unless the context requires otherwise, the following definitions apply:

(1) "Application" means a proposed plan for managing the forest that is proposed to be leased or for which a forest management license is requested.

(2) "Bid" means the amount that a firm, corporation, or individual is willing to pay to manage the forest under the conditions identified in the application.

**NEW SECTION. Section 4. Application for forest management license or lease.** (1) At the request of a firm, corporation, or individual or on the board's initiative, the department may request ~~applications~~ NOMINATIONS for a forest management license or lease.

(2) THE DEPARTMENT SHALL REVIEW EACH NOMINATION AND DETERMINE IF A FOREST MANAGEMENT LICENSE OR LEASE IS APPROPRIATE FOR THE NOMINATED PARCEL. IF THE DEPARTMENT DETERMINES THAT IT IS APPROPRIATE, THE DEPARTMENT SHALL ACCEPT APPLICATIONS FROM ONE OR MORE ENTITIES.

~~(2)(3)~~ An application for a forest management license or lease must:

(a) be in the form specified by the board;

(b) include a management plan that analyzes and discusses all of the requirements and issues identified in ~~subsections (2)(c) and (3)~~ SUBSECTION (4);

~~(c) include an environmental analysis;~~

~~—— (i) required by Title 75, chapter 1, part 2, that will incorporate any information required by the board or described in rules adopted by the board;~~

~~—— (ii) that must be paid for by the applicant as provided in 75-1-203 unless the department provides notice in writing that the department will pay for the cost of the environmental analysis;~~

~~(d)~~(C) include a detailed summary of all costs associated with the preparation of the application; and

~~(e)~~(D) include a bid bond as provided in 77-5-202.

~~(3)~~(4) The department shall evaluate each application, including its potential for:

(a) providing for the proper management and utilization of state trust land timber;

(b) furthering the ~~development~~ MANAGEMENT objectives of the board;

(c) meeting objectives of the board regarding environmental quality and the management of water, fisheries, wildlife, and cultural resources;

(d) conflict with ~~higher and better~~ OTHER COMPATIBLE uses of the land; and

(e) NET financial contribution to the affected trusts.

(5) THE DEPARTMENT OR ITS CONTRACTOR SHALL CONDUCT AN ENVIRONMENTAL ANALYSIS ON THE PROPOSED APPLICATION AND DEVELOP ALTERNATIVES FOR ADDITIONAL APPLICATIONS RECEIVED FOR THE SAME TRACT PURSUANT TO TITLE 75, CHAPTER 1, PART 2. THE DEPARTMENT MAY CONDUCT THE ENVIRONMENTAL ANALYSIS OR HIRE A CONTRACTOR. IF THE DEPARTMENT HIRES A CONTRACTOR, THE DEPARTMENT SHALL MAINTAIN OVERSIGHT OF THE PROCESS.

~~(4)~~(6) The department shall provide information and recommendations regarding each application to the board, INCLUDING THE RESULTS OF ANY ENVIRONMENTAL ANALYSIS CONDUCTED PURSUANT TO SUBSECTION (5).

~~(5)~~(7) The board in its sole discretion may:

(a) accept one or more applications for the same area;

(b) reject any or all applications; or

(c) request modifications to applications.

(8) IF AN APPLICATION IS MODIFIED, THE DEPARTMENT SHALL EVALUATE THE NEED FOR ADDITIONAL ENVIRONMENTAL ANALYSIS.

NEW SECTION. **Section 5. Bidding procedures for forest management.** (1) (a) Subject to subsection (1)(b), the successful bidder must be the highest bidder unless the board determines that the bid is not in the state's best interest.

(b) A bidder may not be considered successful if the bid is not equal to or greater than the fair market value determined in an appraisal pursuant to 77-5-201.

(2) The bid may be based on a system of periodic payments, stumpage, and a bonus offer, if any, or on another payment mechanism. The fair market value must reflect necessary compensation as provided in

1 77-5-116. The bid must include a bid bond pursuant to 77-5-202.

2 (3) If the board has approved the application, the successful bidder shall enter into an agreement with  
3 the department in the form of a forest management license or lease specified by the board.

4 (4) If the successful bidder is not the original applicant, the bidder awarded the license or lease shall  
5 compensate the original applicant for all costs associated with the development of the application and the  
6 DEPARTMENT FOR ALL COSTS associated WITH THE environmental analysis.

7 (5) The successful bidder shall submit a performance bond to be determined by the department  
8 pursuant to 77-5-202. The amount of the bid bond remitted pursuant to subsection (2) will be applied toward  
9 the amount owed for the performance bond.

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11 NEW SECTION. **Section 6. Contents of forest management license or lease.** (1) A forest  
12 management license or lease must:

13 (a) be for a term not to exceed ~~25~~ 10 years, unless extended under [section 7(4)];

14 (b) specify the geographic area within which the licensee or lessee has the exclusive right to manage  
15 consistent with the terms and conditions of the license or lease;

16 (c) incorporate a management plan as part of the license or lease agreement;

17 (d) specify an allowable cut that may be harvested under the license or lease. The amount harvested  
18 must be included as part of the annual sustainable yield as required by 77-5-223.

19 (e) require that the licensee or lessee pay to the state a specified annual rental, stumpage, and a bonus  
20 offer, if any, or another form of payment in the amount determined by the bidding process for the forest  
21 management license or lease;

22 (f) require that the licensee or lessee comply with all provisions of Titles 75 and 77, subject to any  
23 exemptions in those titles, and applicable provisions of federal, state, and local law; and

24 (g) require the licensee or lessee to comply with the terms and conditions of the management plan  
25 schedule contained in the license or lease.

26 (2) A forest management license or lease may:

27 (a) provide for timber to be harvested by persons under contract with the licensee or lessee;

28 (b) be assignable with the prior written permission of the department using a form prescribed by the  
29 department;

30 (c) be issued to a sublicensee or sublessee with the prior written permission of the department, except

1 that the licensee or lessee may not issue a sublicense or sublease on terms less advantageous to the  
2 sublicensee or sublessee than the terms given to the licensee or lessee by the state; and

3 (d) include other terms and conditions considered necessary by the board for the long-term financial  
4 benefit of the trust beneficiaries or preservation of the productive value of the trust lands.

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6 **NEW SECTION. Section 7. Eligibility for forest management license or lease.** (1) The board may  
7 decline to offer a forest management license or lease to a successful bidder or the bidder's officers or  
8 representatives if the board determines that:

9 (a) rights under a previous forest management license or lease have been canceled; or

10 (b) the successful bidder holds an existing forest management license or lease and has failed to:

11 (i) pay stumpage or other money owed to the department for timber harvested under an existing forest  
12 management license or lease;

13 (ii) provide any bond or deposit required by the board with respect to the existing forest management  
14 license or lease; or

15 (iii) perform any obligation under an existing forest management license or lease required to be  
16 performed by the licensee or lessee; or

17 (c) the successful bidder has failed to pay to the department money owed for a state timber sale, an  
18 easement, a license, or other authorization for the use of state lands.

19 (2) The board may offer a forest management license or lease to a successful bidder, or the bidder's  
20 officers or representatives who are subject to an adverse finding pursuant to subsection (1) if the licensee or  
21 lessee of the former or existing forest management license or lease:

22 (a) pays the stumpage or other money due to the department;

23 (b) provides the required surety bond or deposit;

24 (c) performs the obligation required to be performed under the existing forest management license or  
25 lease with respect to land referred to in subsection (1)(b)(iii); or

26 (d) pays money owed for a state timber sale, an easement, a license, or another authorization for the  
27 use of state lands.

28 (3) The board may offer a new forest management license or lease with special conditions to a former  
29 or current licensee or lessee that has been ruled ineligible in the past if the former or current licensee or lessee  
30 has met the requirements provided for in subsection (2) to be considered in good standing. Special conditions

1 that may be imposed to ensure the protection of trust interests include but are not limited to a higher  
2 performance bond.

3 (4) (a) The board may in its sole discretion extend the license or lease if it is in the best interest of the  
4 trust. The license or lease may be extended one time, and the extension may not exceed 5 years. If the  
5 extension is required to complete work identified in the original contract, the board may assess a penalty of up  
6 to 10% of the value of the work remaining.

7 (b) The board may not extend a license or lease for the purpose of conducting work that was not  
8 considered in the original contract without receiving payment equal to fair market value for the additional contract  
9 period and work.

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11 **NEW SECTION. Section 8. Rules -- forest management licensing and leasing.** (1) The board shall  
12 adopt rules concerning:

13 (a) bid bond requirements and amounts; AND

14 (b) ~~the procedure for identifying the payer with respect to the environmental analysis required pursuant~~  
15 ~~to [section 4]; and~~

16 ~~——(c) how forest management licensing and leasing will be applied to the annual sustainable yield~~  
17 ~~requirement provided for in 77-5-222 and 77-5-223.~~

18 (2) (A) The board may adopt rules to define and implement principles and standards relating to the  
19 licensing and leasing of state lands for the purpose of forest management.

20 (B) THE BOARD SHALL ADOPT THE RULES BY JANUARY 1, 2007.

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22 **NEW SECTION. SECTION 9. TERM OF LICENSE OR LEASE. LICENSES OR LEASES ENTERED INTO PURSUANT**  
23 **TO [SECTIONS 3 THROUGH 8] REMAIN IN EFFECT UNTIL THE TERMINATION OF THE LICENSE OR LEASE OR DECEMBER 31,**  
24 **2021, WHICHEVER IS EARLIER.**

25  
26 **NEW SECTION. Section 10. Long-term contracts for sequestration of carbon.** (1) State trust lands  
27 may be licensed or leased for a term of up to 99 years for carbon sequestration purposes. For the purposes of  
28 ~~[sections 9 and 10]~~ [SECTION 11] AND THIS SECTION, "carbon sequestration" means the process of removing  
29 carbon dioxide from the atmosphere and converting it to stored compounds.

30 (2) Unless the board determines that the bid is not in the state's best interest, a license or lease may

be issued to the highest bidder that responds to a department request for proposals for carbon sequestration if the board first determines that:

(a) the rental amount offered represents the full market value of the interest conveyed;

(b) the license or lease is in the best long-term financial interests of the affected trust beneficiaries compared to other conflicting possible uses of the land; and

(c) the issuance of the license or lease is in compliance with the duties of a trustee under Title 72, chapter 34, part 1.

(3) Carbon sequestration proposals must include a management plan describing the practices, activities, reporting, and implementation schedule that will result in carbon sequestration and must allow for third-party verification of carbon sequestration.

(4) Licenses or leases for carbon sequestration may not preclude the use, licensing, or leasing of the land for other compatible purposes.

**NEW SECTION. Section 11. Rules -- carbon sequestration.** (1) The board may adopt administrative rules to define and implement principles and standards relating to the creation, measurement, accounting, marketing, verification, registration, transfer, and sale of carbon sequestration units on state trust lands.

(2) Rules adopted by the board under this section may set standards to ensure that in order to be marketed, registered, transferred, or sold, carbon must be sequestered as a result of state land management activities.

(3) Rules adopted by the board under this section may address qualifications for persons and agencies that provide third-party verification and registration of carbon sequestration.

**NEW SECTION. Section 12. Codification instruction.** (1) [Sections 3 through 8 9] are intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [sections 3 through 8 9].

(2) [Sections 9 10 and 40 11] are intended to be codified as an integral part of Title 77, chapter 6, and the provisions of Title 77, chapter 6, apply to [sections 9 10 and 40 11].

**NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,



1 the part remains in effect in all valid applications that are severable from the invalid applications.

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3 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

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5 NEW SECTION. SECTION 15. TERMINATION. THE AMENDMENTS TO 77-5-201(1) AND (4) THROUGH (6) AND  
6 77-5-202(1) AND [SECTIONS 3 THROUGH 9] AND THIS SECTION TERMINATE DECEMBER 31, 2011.

7 - END -